On October 3, 1991, the Court ordered escrow on the home to be opened with Chicago Title, which is a Defendants in this action. When Plaintiff and Hendricks refused to sign documents necessary to complete the transfer of ownership of the home, the court appointed the clerk of the court as an elisor with the power to sign escrow papers and to grant deeds on behalf of Plaintiff and Hendricks. On January 9, 1992, escrow was closed and the home was transferred to the Boones.

On June 1, 1992, Plaintiff appealed the court's order. On September 10, 1993, the Court of Appeal issued an opinion affirming the verdict, the judgment and the court's award of sanctions against Powell.

Over one year later, Plaintiff filed a complaint against Defendants and others in the Los Angeles Superior Court, basing her claims on their actions in carrying out the court-ordered escrow. On September 12, 1995 the Superior Court sustained Defendants' demurrer without leave to amend as to the Chicago Title Defendants. Plaintiff was granted leave to amend her claims as to other entities named in the action. When Plaintiff filed her amended complaint, however, she added a claim under the federal Racketeer Influenced And Corrupt Organizations Act ("RICO"). (footnote omitted) The Superior Court concluded that no facts supported this cause of action and sustained Chicago Title's second demurrer without leave to amend.

Approximately one year thereafter, Plaintiff, as counsel, filed the same lawsuit, in the same

> court, against the same defendants, in her sister's name. (citation omitted) The Superior Court sustained Defendants' demurrer without leave to amend. Plaintiff was sanctioned for her conduct.
>
> Undeterred, Plaintiff filed an action against the Defendants in the District Court for the Central District of California in June 1997. This action against involved allegations concerning Defendants' involvement in the 1991-92 court-ordered escrow. (citation omitted) In dismissing the claims filed in that action, the court concluded that Plaintiff's claims were barred by the doctrine of *res judicata*. The court held that the general demurrer issued by the Superior Court constituted a judgment on the merits, that the same parties were involved in the state actions, and that the actions involved the same cause of action as the state court actions.

(Id. at 2-4) The court went on to find that Powell's then current action was a fourth lawsuit based n the same set of facts, and that it likewise was barred by the doctrine of res judicata. (Id. at 2.) The court than declared Powell to be a vexatious litigant (Id. at 7-9.)

In a judgment filed July 31, 2001, which is attached as Exhibit 2 to Powell's current complaint, the court ordered, adjudged, and decreed that:

> Plaintiff Patricia H. Powell shall now and forever be required to seek and obtain an order of the court before filing any further actions in any Federal Court of the United States against any of the named Defendants or any party in privity with the named Defendants. Said order shall be made

by the court only upon a satisfactory showing by Patricia H. Powell to the court which includes a certification that the proposed is brought in good faith, that the issues to be addressed in the proposed action have not been raised in prior lawsuit, and that security inthe amount of $50,000 shall be posted before the action is filed.

Compl., Ex. 2 at 2.)

Powell has now filed a fifth complaint, this time in the District Court Northern District of California.

DISCUSSION

A. Rule 12(f) Motion

In response to defendants' motion to dismiss, Powell has filed a motion to strike defendants' motion, pursuant to rule 12(f) of the Federal Rules of Civil Procedure. The Court finds Powell's motion frivolous, as it consists primarily of argument as to why defendants' motion to dismiss should be denied. It does not address the grounds upon which a motion to strike may be granted, specifically, that a "pleading" contains "redundant, immaterial, impertinent, or scandalous matter," see Rule 12(f), and, in any event, a motion to dismiss is not a "pleading." See *Crum v Circus Circus Enterprises*, 231 F.3d 1129, 1130 n.3 (9th Cir. 2000); see also Fed. R. Civ. P. 7 (distinguishing between pleading and motions).

Accordingly, the Court DENIES Powell's motion, brought under Rule 12(f), to strike defendants' motion to dismiss.

B. Request to File Supplemental Briefing

Powell has submitted a Request to File Objection and Objection" to defendants' reply brief. Civil Local Rule 7-3(d) provides that "once a reply is filed, no additional memorandum, papers. or letters may be filed without prior court approval." Civ. L. R. 7-3(d). The Court finds Powell's "Objection" to be unhelpful and unnecessary. DENIES Powell's request that it be filed, and orders that it be STRICKEN from the record. The Court also orders STRICKEN defendants' "Reply to Plaintiff's Request to File Objection," which was filed without prior permission of the Court.

C. Defendants' Motion to Dismiss

Defendants move to dismiss the instant complaint on the ground that the current action, like the others before it, is barred by the doctrine of res judicata or, alternatively, that venue is lacking in the Northern District. The Court, however, will not decide these issues, as Powell was required to obtain court permission and to post a $50,000 bond before filing any complaint, and failed to do so.

Pursuant to the order of the court in the Central District, Powell is not permitted to file an action in any federal court against any of the named defendants in the Alleghany action, or any party in privity with them without first (1) obtaining prior permission from the court; (2) certifying that the proposed action is brought in good faith and that the issues to be addressed in the proposed action have not been raised in a prior lawsuit; and (3) posting a $50,000 bond. Compl., Ex.2 at 2.) The judgment in the Alleghany action identifies Chicago Title as a defendant. (Id. at 1.) Chicago Title is also a defendant in the current

action. Powell's current complaint alleges that Chicago Title has been integrated into defendant Fidelity National, "which assumed its liabilities as well as its assets." Compl. ¶ 7.) Thus, by Powell's own allegations, Fidelity National is in privity with Chicago Title. The individual defendants are all alleged to be officers, employees, or counsel of Chicago Title and/or Fidelity National. (id. ¶ 9.), and thus they also are in privity with Chicago Title and Fidelity National.

As a consequence, Powell was not permitted to file the current action unless she first obtained court permission to do so. Indeed, Powell acknowledges in her complaint that she filed the action in the Northern District because "the Central Dist. twice refused jurisdiction of RICO under pretense it re-litigated *Boone v. Powell/Henricks'* specific performance suit, thus barred by res judicata," and if she filed it in the Central District of California, Judge Cooper would be re-assigned this action and would never consent[.]" Compl. ¶¶ 6.8.) Although the Court appreciates Powell's candor, her displeasure with the orders of the Central District does not authorize her to disregard them.

Accordingly, Powell's complaint must be dismissed, without prejudice to filing a new action if she first obtains court permission and files a $50,000 bond, in compliance with the Alleghany judgment.

Defendants also seek to have Powell declared a vexatious litigant in this district, but as noted, Powell has already been declared a vexatious litigant by the Central District of California in an order that requires Powell to obtain court permission before filing an action against the defendants in any federal court. The Ninth Circuit affirmed that decision in an unpublished

opinion, holding that "[t]he district court did not abuse its discretion in designating Powell as a vexatious litigant because Powell received adequate notice to oppose the motion, the district court recounted and made substantive findings as to the frivolous nature of Powell's filings, and the order was narrowly tailored to remedy Powell's particular abuses.: *Powell v. Allegheny Corp.*, 52 Fed. Appx. 18, 20 (9th Cir. 2002). As Powell is already barred, nationwide, from filing her action without prior court permission, defendants would gain nothing by obtaining a vexatious litigant order against Powell from this Court.

CONCLUSION

For the reasons set forth above, and for good cause shown, (1) Powell's motion to strike defendants' motion to dismiss is DENIED. (2) Powell's request to file and "Objection" to defendant's reply brief is DENIED. Plaintiff's Objection, and defendants' Reply to Plaintiff's Request To File Objection, are both STRICKEN from the record. (3) Defendants' motion to dismiss is GRANTED, and Powell's complaint is DISMISSED, without prejudice to filing a new action if she first obtains permission and posts a $50,000 bond, in full compliance with the July 31, 2001 judgment in Powell v Alleghany Corporation, CV-01-2546 FMC (C.D. Cal. 2001). (4) Defendants' request for an order declaring Powell a vexatious litigant is DENIED as moot.

The clerk shall close the file.

IT IS SO ORDERED.

Dated SEP x9 2003 Signed by Maxine M. Chesney
U.S. District Judge

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT FILED NOV 27 2002

No. 01-56599 D.C.No. CV-01-02456FMC

MEMORANDUM

Patricia H. Powell,

Plaintiff-Appellant,

v.

ALLEGHANY CORP. et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

Before:REINHARDT, RYMER and SILVERMAN,Circuit Judges

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3

** This Panel unanimously finds this case suitable for decision without oral argument See Fed. R. App. P. 34(a)(2). Accordingly, Appellant's motion for oral argument is denied.

Patricia H. Powell appeals the district court's order dismissing her action alleging violations of the Racketeer Influenced and Corrupt Organizations Act RICO) by insurance and title companies involved in the court-ordered escrow and sale of Powell's property. We have jurisdiction pursuant to 28 USC §1291. We review de novo a district court's dismissal based on res judicata, *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997), and we affirm.

Powell's claims have been the subject of two prior state court actions[1], as well as a federal complaint which was the subject of an appeal before this Court.[2] The district court correctly determined that Powell's complaint was barred by principles of res judicata: the claim relates to the same primary right asserted in the prior actions; the prior judgments were final and on the merits; and the plaintiff was party or in privity with a party in the prior actions. See *Monterey Plaza Hotel Ltd. P'ship v. Local 483 of the Hotel Employees and Rest. Employees Union, AFL-CIO*, 215 F.3d 923, 928 (9th Cir. 2000).

Powell's argument that granting preclusive effect to a state court decision violates the Supremacy Clause is without merit. See 28 USC 1738; see also *Takahashi v. Bd. of Trustees of Livingston*, 783 F2d 848, 850 (9th Cir.), *cert. denied*, 476 US 1182 (1986).

The district court did not abuse its discretion in designating Powell as a vexatious litigant because Powell received adequate notice to oppose the motion, the district court recounted and made substantive findings as to the frivolous nature of Powell's filings, and the order was narrowly tailored to remedy Powell's particular abuses. *See O'Loughlin v Doe*, 920 F2d 614,

617 (9th Cir.1990). We have considered the remainder of Powell's contentions and find they lack merit.

AFFIRMED.

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1. The two prior California state court actions were *Powell v Alleghany Corp.*, Case No. GC013802, and *Henricks v Alleghany Corp.*, Case No. GC016003

2. *Powell v Alleghany Corp,; et al*, No.97-56621, 188 F3d 514 (9th Cir. 1999) (unpublished memorandum disposition).

APPENDIX E - JUDGMENT OF UNITED STATES DISTRICT COURT DATED 2 AUGUST 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 01-02546FMC(CTx)

Patricia H. Powell,

Plaintiff,

v.

ALLEGHANY CORP. Through John J. Burns Jr., Chr/ CEO; CHICAGO TITLE CORP., 1998 Spinoff, Through John Rau, P/CEO; CHICAGO TITLE & TRUST CO., Subsidiary, Through John Rau, Pres/CEO; CHICAGO TITLE INS CO., Subsidiary, Through John Rau, Pres/ CEO; CHICAGO TITLE CO., Subsidiary, Through Wm Halvorsen, Jr., Pres,; MICHAEL E. DULLEA, Individually and As Ass't. Vice Pres. And Associate Regional Counsel Of CHICAGO TITLE INS. CO. and Vice Pres. of CHICAGO TITLE CO.; JANICE L. ANDERSON, Individually And As Escrow Officer of CHICAGO TITLE INS.CO./CHICAGO TITLE CO. and CONTROLLED ESCROW COMPANY, And DOES 1-50,

Defendants.

JUDGMENT

Upon review of Defendants' motion for judgment on the pleadings and motion for monetary sanctions and request for Plaintiff Patricia H. Powell to be declared a vexatious litigant, and upon review of the court orders issued as a result of said motion, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment in this matter shall be in favor of all Defendants, named or unnamed, and against Plaintiff Patricia H. Powell. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants; shall not recover any monetary sanctions against Plaintiff Patricia H. Powell but that Plaintiff Patricia H. Powell is hereafter to be declared a vexatious litigant as to each of the named Defendants in this action and as to any party in privity with said named Defendants.

Accordingly, Plaintiff Patricia H. Powell shall now and forever be required to seek and obtain an order of the court before filing any further actions in any Federal Court of the United States against any of the named Defendants or any party in privity with the named Defendants. Said order shall be made by the court only upon a satisfactory showing by Patricia H. Powell to the court which includes a certification that the proposed action is brought in good faith, that the issues to be addressed in the proposed action have not been raised in a prior lawsuit, and that security in the amount of $50,000.00 shall be posted before the action is to be filed.

Dated: 7/3/01

FLORENCE-MARIE COOPER.
Judge, UNITED STATES
DISTRICT COURT

APPENDIX F - ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

No. CV-01-02546FMC

Filed July 25, 2001

IT IS HEREBY ORDERED:

The document is NOT to be filed, but instead REJECTED, and is ORDERED returned to *counsel. Counsel shall immediately notify, in writing, all parties previously served with the attached documents that said documents have not been filed with the court.

No new causes of action against these Defs w/o posting a bond.

Dated: 7/24/01

Florence-Marie Cooper
U.S. DISTRICT JUDGE

* THE TERM "COUNSEL" AS USED HEREIN ALSO INCLUDES ANY PRO SE PARTY. See Local Rule 2.9.3

APPENDIX G - CIVIL MINUTES - GENERAL
ENTERED 12 JUNE 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

No. CV 01-2546FMC(CTx) June 11, 2001
Title: Patricia H. Powell v Alleghany Corp., et al.

PRESENT:
THE HONORABLE FLORENCE-MARIE COOPER, JUDGE

Alicia Mason	Not present
Courtroom clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF	ATTORNEYS PRESENT FOR DEFENDANTS
Patricia Powell	Mark J. Sarni

Proceedings: (In chambers)

SCHEDULING CONFERENCE

The matter came on for scheduling conference. After discussion with counsel for both parties, the Court ordered a stay of discovery until after the Court has had an opportunity to rule on the defendants' Motion for Judgment on the Pleadings, presently set for hearing on June 25, 2001. If the motion is denied, the following schedule is established:

Discovery cut off:	10/03/01
Motion cut off	12/10/01
Pre-Trial Conference	1/14/02 at 9:00 am
Jury Trial	2/20/02 at 9:00 am

APPENDIX H: UNITED STATES DISTRICT COURT ENTERED 22 JUNE 2001

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 01-02546FMC(CTx)

Patricia Powell,

Plaintiff

v.

Alleghany Corporation, et al.,

Defendants

ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS; ORDER DENYING DEFENDANTS' MOTION FOR SANCTIONS; ORDER GRANTING DEFENDANTS' REQUEST TO DECLARE PLAINTIFF A VEXATIOUS LITIGANT; ORDER REMOVING HEARING FROM COURT'S CALENDAR

This matter is before the Court on Defendants' Motion for Judgment on the Pleadings pursuant to Fed.R.Civ.P. 12(c), Defendants' Motion for Sanctions pursuant to Fed.R.Civ.P. 11 and Local Rules 27 and to Declare Plaintiff a Vexatious Litigant pursuant to Local Rule 27A. The Court deems this matter appropriate for decision without oral argument. See Fed.R.Civ.P. 78; Local Rule 7.11. Accordingly, the

hearing set for June 25, 2001, is removed from the Court's calendar. For the reasons stated herein, the Court hereby GRANTS Defendants' Motion for Judgment on the Pleadings, DENIES Defendants' Motion for Sanctions, and GRANTS defendants' request to declare Plaintiff a vexatious litigant.

I. Background

Defendants argue that the present action is the Plaintiff's fourth action regarding the same set of facts, and, as such, Plaintiff's claims are barred by the doctrine of *res judicata*. The record bears out that the subject matter of the present action concerns past litigation that is, at its inception, over a decade old. Defendants have filed copies of pleadings from the litigation between the parties, and the Court hereby takes judicial notice of these filings.[1] To the extent the Court can discern Plaintiff's arguments in opposition to the Motion to Dismiss, Plaintiff contends that dismissal is improper because the state court actions were not addressed on the merits, that the state Court had no authority to address her federal claim under The Racketeer Influenced and Corrupt Organizations Act ("RICO"), that she had no opportunity to be heard regarding her RICO claim, and that dismissal is inappropriate under Fed. R. Civ. P. 12(c).

In 1988 Frank and Sherrie Boone leased a home from Plaintiff Powell and her sisterBarbara Hendricks .

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1. The Court may take judicial notice of pleadings of another court when those pleadings contain adjudicative facts relevant to the issue at hand. See Fed.R.Evid. 201; *Papai v Harbor Tug&Barge Co.*, 67 F3d 203, 207 n.5 (9th Cir. 1995; *reversed on other grounds*, 520 US 548, 117 S.CT. 1535.

The lease agreement contained an option to purchase the home. When the Boones attempted to exercise their option to purchase the home, Plaintiff refused to honor the option and denied the existence of such an option. In 1989, the Boones filed an action in the San Diego County Superior Court to enforce the option agreement and to compel the sale of the home. A trial on the matter was held in 1991, and the jury returned a verdict in favor of the Boones, specifically finding that Plaintiff had committed fraud in denying the existence of an option to purchase the home. The Court ordered the sale of the home to the Boones.

On October 3, the Court ordered escrow on the home to be opened with Chicago Title, which is a Defendant in this action. When Plaintiff and Hendricks[sic] refused to sign documents necessary to complete the transfer of ownership of the home, the court appointed the clerk of court as an elisor with the power to sign escrow papers and to grant deeds on behalf of Plaintiff and Hendricks. On January 9, 1992, escrow was closed and the home was transferred to the Boones.

On June 1, 1992, Plaintiff appealed the court's order. On September 10, 1993, the court of appeal issued an opinion affirming the verdict, the judgment, and the court's award of sanctions against Plaintiff. Over one year later, Plaintiff filed a complaint against Defendants and others in the Los Angeles Superior Court, basing her claims on their actions in carrying out the court-ordered escrow. On September 12, 1995, the Superior Court sustained Defendants' demurrer without leave to amend as to the Chicago Title Defendants. Plaintiff was granted leave to amend her claims as to other entities named in the action. When Plaintiff filed her amended complaint, however, she

added a claim under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO").[2] The Superior Court concluded that no facts supported this cause of action and sustained Chicago Title's second demurrer without leave to amend.

Approximately one year thereafter, Plaintiff, as counsel, filed the same lawsuit, in the same court, against the same defendants, in her sister's name. Compare Request for Judicial Notice, Exh. C, with Request for Judicial Notice, Exh. D. The Superior Court sustained Defendants' demurrer without leave to amend. Plaintiff was sanctioned for her conduct.

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2. Contrary to the arguments raised by Plaintiff in her Opposition to the Motion to Dismiss, state courts have the authority to adjudicate claims under RICO such as the one she asserted in the earlier state court actions. See *Tafflin v Levitt*, 493 US 455, 458, 110 SCt 792 (1990) (holding that state courts have concurrent jurisdiction over federal civil RICO claims). Nor does the court find compelling Plaintiff's claim that her due process rights were violated because the court did not permit oral argument as to her RICO claim. Importantly, the court sustained the first demurrer without leave to amend; therefore, Plaintiff was not entitled to amend the complaint to assert her RICO claim. Moreover, there is no due process right to oral argument. *Federal Communications Commission vs. WJR*, 337 US 265, 69 SCt 1097 (1949)

Undeterred, Plaintiff filed an action against the Defendants in the District Court for the Central District of California in June 1997. This action again involved allegations concerning Defendants' involvement in the 1991-1992 court-ordered escrow. See Request for Judicial Notice, Exh E. Judgment against the Plaintiff was entered on September 25, 1997. See *Powell v. Alleghany Corp.*, CV97-4312GHK (AJWx). Memorandum and Order (Sept. 25. 1997), attached to Defendants' Request for Judicial Notice. In dismissing the claims filed in that action, the court concluded that Plaintiff's claims were barred by the doctrine of res judicata. The court held that the general demurrer issued by the superior court constituted a judgment on the merits, that the same parties were involved in the state court actions,[3] and that the actions involved the same cause of action as the state court actions.[4]

II Res Judicata

The Court may properly consider the issue of res judicata where, as here, it is presented in a motion for judgment on the pleadings pursuant to Fed. R. of P. 12(c). See *Owens v Kaiser Foundation Health Plan, Inc.*, 244 F3d 708, 711, 715 (9th Cir. 2001) (affirming district court's granting of judgment on the pleadings in favor of defendants based on the doctrine of res

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3. The one party that was not involved in the earlier actions was found to be in privity with the defendants in the earlier actions.

4. Specifically, the court held that the same "primary right" was implicated in the earlier actions: the right to proper execution of the court's order regarding the escrow of the sale of the home.

judicata). Federal courts must give a state court judgment the same preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered. *See Migra v Warren City School Dist. Bd. of Ed.*, 465 US 75, 104 SCt 892 (1984). Under California law, res judicata, or claim preclusion, bars relitigation of a claim when a prior action adjudicated 1) the same claim, 2) resulted in a final judgment on the merits, and 3) the party against whom the claim is asserted was a party to or was in privity with a party to the prior action. *Cal State Auto Ins. Ass'n v Superior Court*, 50 Cal.3d 658, 268 Cal. Rptr. 284 (1990); *Clemmer v Hartford Ins. Co.* 22 Cal.3d 865, 151 Cal. Rptr. 285 (1978); *Victa v Merle Norman Cosmetics, Inc.*, 19 Cal.App. 4th 454, 24 Cal. Rptr. 2d 117 (1994).

A. The Same Claim

California follows the "primary right" theory of what constitutes a cause of action. Under this theory, a claim, or "cause of action" is based on the harm suffered, not the particular legal theory asserted by the litigant. *Peiser v Mettler*, 50 Cal.2d 594 (1958). The primary rights theory provides that a "cause of action" is comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty. *Crowley v Katleman*, 8 Cal.4th 666, 34 Cal. Rptr. 2d 386 (1994). The violation of a single primary right gives rise to but a single cause of action. *Id.* As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered. *Id*

"Even where there are multiple legal theories upon which recovery might be predicated, one injury gives rise to only one claim for relief." *Id.* at 668-69. The primary right theory applies when a previous action has resulted in a final judgment on the merits and a defendant in a second action asserts that the second action is precluded under the principles of *res judicata. Id.*

Upon review of the complaint filed in the present action, the court concurs with Judge King's observation in the previous federal action that the same "primary right" was implicated in all the earlier actions: the right to proper execution of the court's order regarding the escrow of the sale of the home. Therefore, because Plaintiff's claims in the present action address the same primary right that was at issue in the three previous actions, the "same claim" element of *res judicata* is met in this action.

B. Final Judgment on the Merits

The Court sustained Defendants' demurrers in the state court actions. "In California, a judgment entered after the sustaining of a general demurrer is a judgment on the merits, and, to the extent that it adjudicates that the facts alleged do not establish a cause of action, it will bar a second action on the same facts." *Palomar Mobilehome Park Ass'n v City of San Marcos,* 989 F2d 362 (9th Cir. 1993) (citing *Crowley v Modern Faucet Mfg. Co.*, 44 Cal 2d 321, 34 [sic] (1955)). Accordingly, Plaintiff's claims in the state court actions resulted in a final judgment on merits.

C. Same Parties or Those in Privity

This court observes, as did Judge King, that the parties to the present action are the same parties or those in privity with the parties in the state court actions. The present case names John Rau as a Defendant; Rau was not a defendant in the state court action. However, as Judge King noted, John Rau, as a newly appointed president of Chicago Title Company, is in privity with the defendants in the state court actions. Plaintiff also adds a new entity to the present action "Chicago Title Corporation, 1998 Spinoff, through John Rau, President and CEO." This entity, as described by Plaintiff, is in privity with the Chicago Title Defendants in the state court actions. Therefore, Plaintiff's claims are asserted against the same parties or those in privity with the same parties against whom the claims were asserted in the state court actions.

Because all the elements of *res judicata* have been met, Plaintiff is barred from relitigating her claims by virtue of the state court judgment. Accordingly, the Court hereby **GRANTS** defendants' Motion for Judgment on the Pleadings.

III. Motion for Sanctions

Defendants move for sanctions pursuant to Fed.R. Civ.P. 11 and Local Rules 27 and 27A. Sanctions are not proper under Rule 11 because Defendants have failed to comply with the notice provisions of that Rule. An often ignored provision of Rule 11 states that a motion for sanctions pursuant to Rule 11 must be served on the offending party twenty-one days before

it is filed with the Court. Fed. R. Civ. P. 11(c)(1)(A). this provision is meant to give the offending party the opportunity to voluntarily withdraw the paper, claim, defense, contention. allegation. or denial that is alleged to have violated Rule 11. *Id.* Because Defendants have not complied with the requirements for bringing a motion for sanctions pursuant to Rule 11 cannot be made.

Defendants also move for sanctions pursuant to Local Rules 27 and 27A. Local Rule 27A concerns vexatious litigant and is addressed separately, below. Local Rule 27 authorizes the Court to impose monetary sanctions if the Court finds a violation of any of the Local Rules. Defendants have pointed to no Local Rule that Plaintiff has violated. Therefore, the Court denies Defendants' Motion for Sanctions pursuant to Local Rule 27.

IV. Vexatious Litigants

Defendants have moved to have Plaintiff declared a vexatious litigant. Local Rule 27A addresses vexatious litigants:

> 27A.1 POLICY - It is the policy of the Court to discourage vexatious litigation and to provide persons who are subjected to vexatious litigation with security against the costs of defending against such litigation and appropriate orders to control such litigation....
>
> 27A.2 ORDERS FOR SECURITY AND CONTROL On its own motion or on motion of a party, after opportunity to be heard, the Court may, at any time, order a party to give security in such amount as the Court determines to be appropriate to secure the payment of any costs,

sanctions or other amounts which may be awarded against a vexatious litigant, and may make such other orders as appropriate to control the conduct of a vexatious litigant. Such such orders may include, without limitation, a directive to the Clerk not to accept further filings from the litigant without payment of normal filing fees and/or without written authorization from a judge of the Court or a Magistrate Judge, issued upon such showing of the evidence supporting the claim as the judge may require.

27A.3 FINDINGS - Any order issued under Rule 27A.2 shall be based on a finding that the litigant to whom the order is issued has abused the Court's process and is likely to continue such abuse, unless protective measures are taken.

27A.4 REFERENCE TO STATE STATUTE - Although nothing in this rule shall be construed to require that such a procedure be followed, the Court may, at its discretion, proceed by reference to the Vexatious Litigants statute of the State of California, Cal. Code Civ. Proc. §391-391.7.

Defendants suggest that the Court should make reference to California statutory law regarding vexatious litigants. Specifically, defendants suggest application of the definition of "vexatious litigant" found in Cal. Code Civ. Proc. § 391(b)(2), which provides:

(b) "Vexatious litigant" means a person who does any of the following:

> (2) after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona, either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom litigation was finally determined.

Cal.Code Civ. Proc. § 391(b);see also *First Western Development Corp. v Superior Court (Andrisani)*, 212 Cal. App.3d 860, 261 Cal. Rptr, 116 (1989) (holding that an unsuccessful defendant in unlawful detainer proceeding who filed five suits against opposing party, its officer, and attorneys, three of which attempted to relitigate issues previously raised in unlawful detainer action, was "vexatious litigant" within meaning of § 391(b)(2) and therefore, defendant could be required to post appropriate bond in pending and future suits).

The Court finds Plaintiff to be a vexatious litigant. She has filed meritless claims against the same Defendants in four separate actions, all four of these actions were based on the same primary right as defined by California Law on res judicata, and all four were based on the same underlying factual allegations: the 1991-1992 court-ordered escrow. The Defendants have incurred over $25,000 in legal expenses defending these meritless claims. Previous monetary sanctions have been ineffective in deferring Plaintiff's frivolous filings, and Plaintiff appears to be unable to pay these sanctions.

Accordingly, Plaintiff is hereby ordered to seek leave of the Court before filings complaint against any of the Defendants named in this action (or any party in privity with the Defendants) based on any of all of the facts alleged in the complaint, including any claims based on the 1991-1992 court-ordered escrow. Plaintiff must certify that the claims she wishes to present are brought in good faith and that they have not been raised in any previous actions. Plaintiff must also post security in the amount of $50,000 before filing such a complaint.

The clerk of the court is directed to reject Plaintiff's filings absent compliance with the requirements of this order.

V. Conclusion

The Court hereby grants Defendants' Motion for Judgment on the Pleadings. Defendants shall file, within ten days of the entry of this Order, a proposed judgment consistent with this order. Defendants' Motion for Sanctions is denied. Plaintiff has been declared a vexatious litigant based on the record as outlined in this order. she must comply with the requirements outlined in the previous section before she will be permitted to file any future claims against these Defendants.

IT IS SO ORDERED.
DATED this 21st day of June, 2001.

Signed: Florence-Marie Cooper
Judge, UNITED STATES
DISTRICT COURT

APPENDIX I: CIVIL MINUTES-GENERAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case No. CV 01-2546 FMC(CTx) Date: July 31, 2001

Title: PATRICIA H. POWELL V ALLEGHANY CORP. etal

PRESENT:

THE HONORABLE FLORENCE-MARIE COOPER, JUDGE

Alicia Mason Courtroom Clerk	Not present Court Reporter
ATTORNEYS PRESENT FOR PLAINTIFFS	ATTORNEYS PRESENT FOR DEFENDANTS
Not present	Not present

PROCEEDINGS: ORDER DENYING PLAINTIFF'S MOTION TO AMEND JUDGMENT (In chambers)

This matter is before the Court on Plaintiff's Opposition to Defendants' Proposed Judgment and Motion to Amend Judgment or Alter the Judgment. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78: Local Rule 7.11. Accordingly, the hearing set for August 6. 2001, is removed from the Court's calendar.

In substance, Plaintiff's Opposition and Motion merely set forth arguments that were raised in opposition to Defendant's [sic] Motion for Judgment on the

Pleadings. Accordingly, the Court hereby DENIES Plaintiff's Motion to Amendment [sic] Judgment or Alter the judgment.

Plaintiff also requests that the Court reconsider its Order declaring her a vexatious litigant. For the reasons stated in the Court's June 21, 2001, Order, Plaintiff has properly been declared a vexatious litigant. Accordingly, the Court DENIES Plaintiff's request.

Initials of clerk:

ENTERED ON ICMS Aug - 2001

Recording requested by and return to
Steven E. Comer B#154384
Baker & McKenzie
101 West Broadway Ste 1200
San Diego, CA 92101-3890
X Attorney for X judgment creditor

Name of Court: Los Angeles Superior Court
Street Address: 300 E. Walnut Street
City and Zip Code: Pasadena, CA 91102-1566
Branch: Northeast Dist. Pasadena
Plaintiff: Patricia H. Powell

Defendant: Alleghany Corporation, et al

Case No.
GC013802

ABSTRACT OF JUDGMENT

1. The x: judgment creditor
applies for an abstract of judgment and represents the following:

a. Judgment debtor
Patricia H. Powelll
111A Oliva Court
Novato, CA 94947
b. Drivers' license: G635233- California
c. Social Security No. XXXXXXX
d. NA
e NA

Date: March 25, 1998

Steven E. Comer /S/

2. a. x I certify that the following is a true and

correct abstract of the judgment entered in this action

b. (blank) A certified copy of the judgment is attached

3. Judgment creditor: Chicago Title Company, 925 B Street, San Diego, CA 92101

4. Judgment debtor (as name appears in judgment) Patricia H. Powell

6. Total amount of judgment as entered or last renewed:

$54,000

SEAL OF SUPERIOR COURT OF LOS ANGELES COUNTY

5. a. **Judgment entered on**: **Nov. 26, 1997**
b. renewal (blank)
c. renewal (blank)
JOHN A. CLARKE (stamp)

7. An execution attachment lien is andorsed on the judgment (blank)
8. A stay of enforcement has not been ordered by the court.

This abstract issued on Apr 07 1998
Clerk: C. Eggleston, Deputy (signed)

ABSTRACT OF JUDGMENT

Recording requested by and return to
W. Dean Cloud
17911 Von Karman Ave., Suite #300
Irvine CA, 92614
(949) 622 4343

(X) Attorney for (X) judgment creditor

Name of Court:	Los Angeles Superior Court
Street Address:	300 E. Walnut Street
City and Zip Code:	Pasadena, CA 91102-1566
Branch:	Northeast Dist. Pasadena
Plaintiff:	Patricia H. Powell

Defendant: Alleghany Corporation, et al

Case No.
GC013802

AMENDED **ABSTRACT OF JUDGMENT**

1. The x: judgment creditor
applies for an abstract of judgment and represents the following:

a. Judgment debtor
Patricia H. Powelll
111A Oliva Court
Novato, CA 94947
b. Drivers' license: G635233- California
c. Social Security No. XXXXXXX
d. NA
e NA

Date: April 2, 2002

W. Dean Cloud /S/
2. a. x I certify that the following is a true and

correct abstract of the judgment entered in this action.

b. (blank) A certified copy of the judgment is attached

3. Judgment creditor: Chicago Title Company, 925 B Street, San Diego, CA 92101

4. Judgment debtor (as name appears in judgment) Patricia H. Powell

6. Total amount of judgment as entered or last renewed:

$71,000.00

SEAL OF SUPERIOR COURT OF LOS ANGELES COUNTY

5. a. **Judgment entered on**: **11/26/ 1997**
b. renewal (blank)
c. renewal (blank)
JOHN A. CLARKE (stamp)

7. blank An execution blank attachment blank lien is andorsed on the judgment (blank)

8. A stay of enforcement has X not been ordered by the court.

This abstract issued on Apr 05 2002 1998
Clerk: Y. Simmons, Deputy (signed)

ABSTRACT OF JUDGMENT

Recording requested by and return to
W. Dean Cloud
17911 Von Karman Ave., Suite #300
Irvine CA, 92614
(949) 622 4343

(X) Attorney for (X) judgment creditor

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES NORTHEAST JUDICIAL DISTRICT

300 E. Walnut Street
Pasadena, CA 91101-1566
Plaintiff: Patricia H. Powell
Defendant: Alleghany Corporation, et al #GC013802

WRIT X EXECUTION (Money Judgment)
OF X POSSESSION OF: Real Property

(blank) SALE

1. To the Sheriff or any Marshal or Constable of the County of: Los Angeles
   You are directed to enforce the judgment described below with daily interest and your costs as provided by law.
2. To any registered process server: NA
3. (Name) Chicago Title Company
   is (x) judgment creditor whose address is shown on this form above the court's name
4. Judgment debtor:
   Patricia H. Powell
   111A Oliva Court
   Novato, CA 94947
5. **Judgment entered on: 11/26/97**
6. (blank) Judgment renewed on (date)

7. Notice of sale under this writ
   a. (x) has not been requested
   b. blank has been requested (see reverse)
8. (blank) Joint debtor
9. (blank) See reverse side for information on real or personal property to be delivered under a writ of possession or sold under a writ of sale
10. This writ is issued on a sister-state judgment

11. Total Judgment	$71,000
12. Costs after judgment **(per filed order)** or CCP 685.090	**blank**
13 Subtotal	$71,000
14. Credits	**blank**
15. Subtotal	$71,000
16. Interest after judgment **(per filed affidavit CCP 685.050)**	**$27,796.28**
17. Fees for issuance of writ	$ 7.00
18. Total	$98,803.28
19. To levying officer: add daily interest	$ 19.45

20. NA

SEAL OF
SUPERIOR COURT
OF LOS ANGELES
COUNTY

JOHN A. CLARKE (stamp)

Date issued: July 28 2001 By. Y. Simmons /s/

NOTICE TO PERSON SERVED: SEE REVERSE
FOR IMPORTATN INFORMATION

Reverse Side

9. (Blank) *Writ of Possession or Writ of Sale*:
Judgment was entered for the following:
a. (Blank) Possession of real property. The complaint was filed on (date) Check 1,2
(1) (Blank) The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46
The judgment includes all tenants, sub-tenants, named claimants and other occupants of the premises
(2) The {Prejudgment Clam of Right to Possession was NOT served in compliance with CCP 415.46
(a) $ was the daily rental value on the date the complaint was filed.
(b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (specify)
(blank)

c. NA
d. (Blank) Sale of real property

Short Title: Powell v Alleghany
Case No. GC013802

NOTICE

IMPORTANT LEGAL NOTICE TO
HOMEOWNERS

FILED
LOS ANGELES SUPERIOR COURT
MAR 04 2002

1. YOUR HOME IS ABOUT TO BE SOLD TO PAY OFF YOUR DEBTS

DATE TIME AND PLACE OF THE HEARING

Date: April 9. 2002
Time 8:30 AM
Place: Los Angeles Superior Court - Pasadena
300 E. Walnut Street
Pasadena, California - Dept. R

(Spanish Language)

(Letterhead) CHICAGO TITLE INSURANCE COMPANY
December 28, 2001

Los Angeles County Sheriff's Department
Court Services Division, Real Estate Sec.
110 N. Grand Ave., Rm 525
Los Angeles, CA
Attn: Reba Barnes
RE: GC 013802R

Dear Ms. Barnes:

We have received notice that on September 20, 2001 your department levied on real property located at 625 Esplanade Unit #205 C, Redondo Beach, California.
Your [sic] instructed to mail a Notice of Sale to the following senior lienholder:

Washington Mutual (Great Western Savings & Loan)
19850 Plummer Street
Chatsworth, CA 91311
Loan No. 0802461541

There is an outstanding tax lien, superior to our lien, in the amount of $128.84 recorded on October 21, 1992 as instrument No. 92-1943364 and filed against Steven Powell.

If you have any questions or need further information pleaase call me or Catalina Lewis at the toll free number listed below.
Very truly yours,
CHICAGO TITLE INSURANCE CO.
/S/

W. Dean Cloud,
Vice President cc: Patricia Powell

W. DEAN CLOUD, ESQ #119606
7911 Von Karman, Suite 300
Irvine, CA 92614-6253
(949) 622-4301
(949) 622-4132 (fax)

Attorneys for Judgment Creditor
CHICAGO TITLE COMPANY

FILED
LOS ANGELES SUPERIOR COURT
MAR 04 2002
John A. Clarke, Clerk
By J.L. Snyder, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES,
NORTHEAST JUDICIAL DISTRICT

Patricia H. Powell
Plaintiff,

vs

Alleghany Corp. et al
Defendant [sic]

Case No. GC013802

ORDER TO SHOW CAUSE WHY AN ORDER FOR SALE OF DWELLING SHOULD NOT ISSUE

Date: April 9, 2002
Time: 8:30 am
Dept: R
Hon. Michael J. Byrne

TO THE JUDGMENT DEBTOR AND ANY OTHER DEFENDANT(S) HEREIN:

The Court having considered the ex parte application of the Judgment Creditor for an Order for the Sale of

the dwelling commonly known as 625 Esplanade #205C, Redondo Beach, California 90277-4142 and for good cause,

IT IS HEREBY ORDERED that judgment debtor and defendant Patricia H. Powell appear on April 9, 2002 at 8:30 am in Department R of this court, located at 333 E. Walnut Street, Pasadena. California, to show cause , if any, why the attached ex parte application for sale of dwelling should not be granted.

IT IS FURTHER ORDERED that a copy of this Order to Show Cause, of the application of the judgment creditor and of the Notice of Hearing in the form prescribed by the California Judicial Council shall be served, personally or by mail, on the judgment debtor. Copies of each of these documents shall also be personally served on the occupant(s) of the dwelling or, if no occupant(s) is/are present at the time service is attempted, posted in a conspicuous place at the dwelling. Service and posting of these documents shall be accomplished at least 30 days before the date of the hearing set forth above.

Dated: 3/4/02 /s/

Honorable Michael J. Byrne

CERTIFICATE OF COUNSEL

I, Patricia H. Powell, certify that this petition for rehearing is filed to bring attention to the Court of defendants' intervening racketeering activity which petitioner was barred pleading in any federal district court now and forever and subsequently enforced by the Northern District of California.

The use of inherent powers under aegis of local rule contravening 28 USC §2071 by the Central Dist. and affirmance by the 9th Cir.'s use of res judicata to re-write jurisdictional requirements of civil RICO shifts the balance of power to inferior courts to declare the laws of the land.

This petition is presented in good faith and a firm belief in precedence of Supreme Court Decisions, the Constitution and Congressional intent in enacting civil RICO lending security to well-established law.

No contention or argument is presented herein which contravenes these authorities to the best of my knowledge.

21 October 2005

Patricia H Powell

Patricia H. Powell #133893
Member of the United
States Supreme Court Bar